



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal
of
MILDRED A. DUNWOODY

Appearances:

For Appellant: Harold E. Sprague, Public Accountant
For Respondent: Burl D. Lack, Chief Counsel;
Frank E. Caine, Associate Tax Counsel

O P I N I O N

This appeal is made pursuant to Section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Mildred A. Dunwoody to a proposed assessment of additional personal income tax in the amount of \$388.78 for the year 1949.

In the year 1949, a building owned by Appellant was completely destroyed by fire. At the time of the fire the property was occupied by a tenant under a 50 year lease which obligated the lessee to replace the building in the event of its destruction. The lessee carried insurance on the building and received payment after the fire. Appellant, as the lessor, also carried insurance. On November 4, 1949, she was sent the following letter by her insurance company:

"You are hereby notified that the undersigned insurance company does not assent to the amount of loss claimed by you in the document purporting to be an amended preliminary proof of loss, which is undated and which was transmitted to us by your attorneys with a letter dated 20 October 1949, and said insurance company totally disagrees with the amount of loss claimed by you and does not admit that you suffered any loss on any of the articles of-property set forth in said preliminary proof of loss.

"This letter is written simply to express disagreement with the amount of loss claimed by you, and is not intended to be and shall not be

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taken as an admission of liability in any amount whatsoever; or a waiver of any of the provisions of the said policy of insurance, of any of your obligations thereunder, or of any defense now or hereafter available to the undersigned insurance company."

In her return for the year 1949, which was filed in April, 1950, the Appellant claimed a loss deduction of \$12,495.00, representing the original cost of the building less depreciation. Attached to her return was a statement that:

"Building lost was under lease for 50 years, lessee planning on razing building at a later date and constructing a new building. Lessee covered the building by insurance and had received settlement. Lessor had insurance on building before lease was made and continued it until time of fire. Payment on lessor's policy has not been made and the matter will have to be settled by pending court action. By terms of lease the lessee is required to replace building, but if this is done building will be owned by lessee until termination of the lease 40 years hence, when it goes to lessor,

"Contention is that lessor suffered a loss by fire, regardless of whether lessee rebuilds or not,

"Loss claimed is cost less depreciation, This will have to be adjusted in the event insurance is collected as a result of pending court action."

In 1952 the Appellant recovered a judgment against the insurance company in the amount of \$10,000 plus interest. She reported the amount of \$5,772.22 as income for the year 1952. This represented her recovery less legal fees,

The Franchise Tax Board has disallowed the loss claimed for 1949 on the ground that any loss was deductible in 1952, the year of final settlement. Appellant states that if she took the deduction in 1952 there would be a tax benefit to her of only about \$28.00 and contends that the deduction is permissible in 1949,

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The Appellant contends that decisions of the Federal courts are not authority for the interpretation of State law and that in any event the Federal cases merely permit but do not command deduction in a year other than that of the physical casualty. We are not in accord with these **contentions**. Federal decisions are to be given great weight in the interpretation of State laws identical to and based upon Federal laws (Meanley v. McColgan, 49 Cal. App. 2d 203). These decisions do not allow the taxpayer freedom to choose the year of greatest tax benefit in which to take his deduction. They hold, rather, that a loss is not deductible until it is established by a closed and completed transaction,

O R D E R

Pursuant to the views expressed in the Opinion of the Board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to Section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Mildred A. **Dunwoody** to a proposed assessment of additional personal income tax in the amount of \$388.78 for the year 1949 be and the same is hereby sustained,

Done at Sacramento, California, this 12th day of June, 1957, by the State Board of Equalization.

Robert E. McDavid, Chairman

Paul R. Leake, Member

J. H. Quinn, Member

George R. Reilly, Member

Robert C. Kirkwood, Member

ATTEST: R. G. Hamlin, Acting Secretary